
MONTANA REAL ESTATE

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LOG ON TO BRR

By John Beagle

Have you ever needed the form to apply for a broker license? Have you ever had a question about the statutes or rules pertaining to real estate? Have you wondered what continuing education courses were coming up and needed additional information about them? Have you needed application forms and information about property management or timeshare? What about an old BRR Newsletter article that you remember reading but now can't find?

Well, all of this, and a lot more, is now available on our new semi-interactive web site for all real estate, property management and timeshare licensee's. This web site, now a couple of months old, is sure to be some help for you at sometime in your career. At this time the forms can be viewed and downloaded in PDF format for you to fill out and return. All the application forms for licensees are available as well as information concerning rules, statutes, licensing requirements, and more.

The home page has two main selection areas. Occupations/License Information Applications and Board Information. Under the first category you will find all applications, forms, rules and statutes pertaining to:

Continued on Page 2

INSIDE THIS ISSUE

- 2 Legislative Update
- 2 Meet the New Staff
- 3 Education Notes
- 4 Complaint Screening Committee
- 4 In the Case Of...
- 6 Board Calendar at a Glance

Are you smart enough to sell smart houses?

By Frank Cook, Agency Law Quarterly

For some people, buying a home isn't enough anymore. They want a little magic to go with it. A gadget here. A doohickey there. A bit of technology to add a little sizzle to four walls and a ceiling. Just enough to impress their friends.

Not just a security system. Not sexy enough.

But an in-home theater. That's better. A refrigerator that keeps track of how much orange juice is left. A clothes washer that sends an e-mail to the manufacturer when a drive belt is frayed. An oven with a built-in camera so you can watch the roast cooking while you're at the office.

Real estate agents – like all other consumers – have been hearing about these gadgets for years. Now, however, it appears the home electronics industry is about to explode. But if agents, inspectors, appraisers and others aren't careful, they are going to be caught with little knowledge about an industry that could fundamentally impact homeownership.

Says John Galanto, publisher of *Tech Home Builder* magazine, the "structured wiring" industry – the people putting high-tech wiring behind the walls of new homes – has been doubling every year. "This year we expect to see \$400 million in sales. Next year it could touch \$1 billion."

Pulte Homes, the nation's largest builder, has committed to making sure every home it builds from now on will be "future wired."

Concepts homes already have been put together by companies like GE, Intel, Cisco and Microsoft, and the gadgets are mind-boggling.

Insiders say many of the players are ready to put out products – thinking refrigerators, smart ovens, robot vacuum cleaners – in the 2001 to 2004 time frame.

The problem, however is there aren't many people around yet who are smart enough to sell smart houses.

More succinctly:

- In the near future, an agent and buyer touring a home will notice display panels in every room. The buyer is going to want to know what they

Continued on Page 5

**THE HONORABLE JUDY MARTZ
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Sherri Johnson, Licensing Technician

Troy Robertson, Auditor

The views expressed in the reprinted articles are those of the author and not necessarily those of the Board and are intended as informational only.

Continued from Page 1

1. Property Manager
2. Real Estate Broker
3. Real Estate Salesperson
4. Timeshare Broker
5. Timeshare Salesperson
6. Timeshare Offering

Under the second main category is information and links for:

1. Board Address and contacts (includes telephone numbers and email)
2. Board Members
3. Board Statutes
4. Board Rules and Rule Notices (the latest rule notices are available for viewing & downloading)
5. Meetings and Agendas
6. Newsletters (previous issues available for viewing and/or downloading)
7. Continuing Education Calendar (all of the latest educational courses approved by BRR)
8. License Verification Request (find out if someone does or does not have a license)
9. Complaint Form and Instructions (if you, or someone, needs to file a complaint)
10. Related Real Estate Links (ARELLO, AMP Exam Service etc.)
11. Change Form (for change of name, address *or* office)

As you can see, there is lots of information on our new web site along with numerous links to other relevant areas. Be sure to check it out. Log on, browse around, bookmark the site. It is a site that I am sure you will have use for at some time.

<http://com.state.mt.us/license/pol>

Legislative Update

There are several legislative bills that the Board has been tracking. This update is based on information currently available at the time this newsletter was compiled.

HB 120 is the POL Division housekeeping bill that includes the elimination of broker owner/broker associate designations. This bill has passed both houses but was amended in the Senate. It is now back in the house awaiting approval of the amendments. We do not anticipate any problems with the final passage and signature of this bill. If signed, it will be effective October 1, 2001. This bill will eliminate the two categories of brokers.

SB 445 will move the Professional & Occupational Licensing Division to the Department of Labor & Industry. This bill was requested by the Governor. It has passed the Senate and awaits action in the House. If passed it will be effective July 1, 2000. The Board of Realty Regulation is a member of the POL Division and would be moved to the Department of Labor. No physical move is anticipated.

Meet the New Staff

Chairman Beagle and the Board of Realty Regulation are pleased to announce the hiring of two new staff members.

Sandy Matule is the new Administrative Assistant with the Board. Sandy comes to the board highly recommended from the private sector. She has extensive office work and is looking forward to working with the real estate licensees.

Troy Robertson is the new Auditor. Troy will be visiting the offices throughout Montana conducting trust account audits. Troy is new to state government and new to Helena.

We welcome both of these new employees to the Board.

EDUCATION NOTES

By Mike Meredith, Education Director

2000 Audit

We will soon be mailing the audit notices to those licensees who have been selected for the continuing education audit. If you are selected through the random process, please send copies of your 2000 continuing education certificates as soon as possible. The deadline for receipt of the certificates is thirty (30) days following the date of the mailing of the audit notice. Be sure to include attendance certificates for any hours that have been carried over.

Rookie CE

The dates and locations for the Rookie CE classes have been set and are as follows

May 17 & 18 at Marina Cay in Bigfork
June 28 & 29 at the Wingate Inn in Bozeman
September 13 & 14 at the Billings Hotel and Convention Center
October 4 & 5 at the Best Inn and Conference Center in Missoula
December 6 & 7 at the Department of Transportation in Helena

All licensees who have received a license since January 1, 2001 are required to take the class. Rookie CE is twelve hours in length and costs \$100. We implore all brokers who are supervising new licensees to encourage them to take the class soon after they receive their interim license. We are mailing registration information to all new licensees along with their interim licenses. If the new licensee can work for a month or two before taking the class that would be ideal. However, we are concerned that many licensees might wait until the December class, creating a class that would be too large for optimum education and maybe even too large for the facility, which will only accommodate about 100 students. Students in last year's Rookie CE classes reported that the class was excellent and well worth attending. They stated that the class provided much needed instruction on listings, buy-sell agreements, pricing property, financing and closing in addition to other basic information.

Class Attendance

We have recently received several calls about the requirements that licensees must meet in order to earn credit for attending a continuing education class. I urge all of you to attend classes for the entire time of the presentation and not place sponsors and instructors in the uncomfortable position of having to deny issuing an attendance certificate. Those who leave a class for extended amounts of time should realize that by **their** actions they are making a choice to forfeit their attendance certificate.

Monitor Program

The Board of Realty Regulation is exploring a plan for evaluating continuing education classes. If the plan is pursued, the board will ask licensees to apply to attend and evaluate classes approved by the board and offered for continuing education credit. Monitors would be supplied with an outline of the class, attend the class and send to the board a brief evaluation of the class. They would NOT be asked to report to the instructor or provide the instructor with an "on the spot" evaluation or to supervise attendance or assist with the management of the class. In return for their efforts, monitors would be able to attend the class and receive credit for their attendance free of charge. More information on the monitor program will come as the board makes decisions about it.

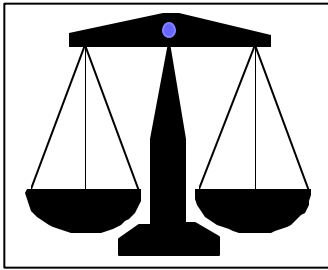
ARELLO announced the completion of a useful online resource for real estate practitioners seeking courses available in a variety of distance education formats that are approved for credit by regulators.

This new tool, located at WWW.ARELLO.NET, will allow real estate licensees to search through hundreds of distance education courses that are offered by multiple providers and approved for credit within different regulatory jurisdictions. The availability of this new web-based search capability will allow licensees to quickly and easily find quality distance education courses to meet CE requirements by simply selecting the area in which the licensee seeks credit.

In addition to providing easy access to real estate courses taught via computer, satellite, correspondence and other media, site visitors can be assured that each of the courses listed at WWW.ARELLO.NET has been certified for quality design and delivery. ARELLO Distance Education Certification helps ensure students have a positive educational experience and addresses the concerns of regulators regarding the quality in educational offerings. ARELLO has been an international leader in the development of distance education standards and a certification program that is used to evaluate the quality of courses offered around the globe.

"This new search tool at WWW.ARELLO.NET will be the essential resource for real estate licensees seeking educational opportunities through their computers or other media," said ARELLO President D. Philip Lasater. "Licensees needing CE in a jurisdiction far away from their residence can use WWW.ARELLO.NET to find quality distance education courses that are approved for credit in the needed jurisdiction."

"We are excited about helping licensees obtain better access to quality distance education courses. The fact that the courses are easy to find with the search tool and, more importantly, that they are certified for quality gives the licensee every opportunity for a good educational experience. Providing a better educated licensee is one way of protecting the public," said Lasater.



Complaint Screening Committee

The Board of Realty Regulation Complaint Screening Committee had two meeting since the last newsletter.

At the January meeting the Committee reviewed 5 new complaints. Of those 5 cases, two were board-generated complaints filed against supervising brokers as a result of a complaint filed against one of their salespeople. Three complaints were dismissed with letters of instruction, one was dismissed without prejudice and one was sent to investigation.

The board-generated complaints concerned the question of broker supervision and the steps taken by the broker to supervise the salespersons during these transactions. One broker provided documentation outlining his office policy, regular meetings and steps taken to eliminate the type of situation found in the original complaint. The Committee was very impressed with the response and voted to dismiss the complaint. The other broker did not address the supervision issue and instead reiterated the facts of the original complaint. The Committee voted to investigate this complaint to determine what supervision occurred by the broker.

Two investigative reports were reviewed. Both resulted in a notice to the licensee that probable cause existed that a violation of the license law had occurred. One case involved a Montana licensee going to Wyoming making a verbal offer on behalf of his client. He had not obtained a Wyoming license. The other investigation involved a licensee who had presented a purchase agreement to the seller that did not include any contingencies. After the offer had been accepted the licensee informed the seller that the transaction could not close until the buyer sold their out-of-state home. The Committee found reasonable cause to notice this licensee for failure to attempt to obtain all agreements in writing.

At the March meeting the Committee reviewed 11 new complaints. Three investigations were requested, two were dismissed with prejudice, one dismissed without prejudice and 5 were dismissed with a letter of instruction.

One case involved a buyer purchasing the house over the Internet. The buyer complained the property was not as it was represented and the licensees had withheld important information. The Committee noted that the home inspection was waived. A word to the wise in a situation like this,

insist the buyer has the home inspection, especially when they are not viewing the property prior to closing.

A property management complaint was filed. The tenant complained that the licensee refused to refund the security deposit or provide a breakdown of expenses. The involved property had a number of substitute tenants moving in and out. The property manager had no record of the complainant but had accepted check for rent. The Committee felt the licensee had a responsibility to the property owner to determine who that person was and why they were paying rent.

Two licensees had property listed. An offer came in and was countered. The counter offer was signed by only one owner. Another offer was received and accepted by both sellers before the counter offer expired. The sellers contended that because only one signed the counter offer it was not valid. An attorney for the licensee's E&O coverage informed the licensees that is may not have been appropriate for the sellers to accept another offer before the counter offer time had expired.

IN THE CASE OF

These cases are excerpts from the 2000 ARELLO Legal & Professional Conduct Committee Annual Report. The report is printed in the ARELLO Digest in its entirety and can be obtained by contacting ARELLO Headquarters at PO Box 230159, Montgomery AL 36123-0159; by phone at 334-260-2902 or by e-mail at malbox@ARELLO.org.

Johnson v. Neuville, 595N.W.2d 100 (1999) Wisconsin Court of Appeals

Facts: Johnson bought a commercial property listed by Neuville, a broker. Johnson sued Neuville alleging that Neuville had represented that the property had access to a certain street via an easement over a neighboring business property. While there were cross-easements between the subject and neighboring properties to permit shared parking, there was, in fact, no access easement to the public street. Between contract and closing, Johnson had received maps and plans of the subject and neighboring properties. None of those showed an access easement. At closing, Neuville expressed some concern because there was no easement language in the deed, but the parties closed anyway. After closing, the seller informed Johnson there was no access easement. Johnson won the action against Neuville at the trial level.

Issue: On appeal, Neuville asserted that he was relieved of his duty to disclose the absence of the easement by a state statute which provides that a broker is not responsible when there are reliable third-party reports about the property. Neuville asserted that the maps and plans which showed no easement should have alerted Johnson to the problem.

Held: Affirmed. The court rejected Neuville's

Continued on Page 5

do.

- Buyers are going to notice bizarre looking switch plates mounted where wall outlets used to be. They are going to want to know what they're for.
- Hidden in a closet or tucked down in the basement, a large black box with wires of all shapes and sizes running in and out will get a buyer's attention. He's going to want information.

Will real estate agents know generally, if not specifically, what that box does? And will they be able to refer that buyer to someone who can check to make sure it's operating properly? Today, the answer is "no."

Hugo Weber, head of the nation's largest real estate school – Polley Associates in Newtown Square, PA. – says educators are only in the early talking stages about what agents are going to need to know about the home of the future.

"The role of the real estate agent in the future is that of 'infomediary,'" Weber says. "Agents are not going to know how every wired home works, but they are going to have to know experts who do."

But that's a problem. Historically, agents have turned to home inspectors with these kinds of questions. But right now the home inspection industry is just as unprepared as the brokers.

Home inspector Tom Kraeutler, whose radio show "The Money Pit" is syndicated nationally, concedes inspectors are not ready for the challenge.

"Inspectors are trained to a standard, and that standard right now does not include electronic homes," he said. "We (American Society of Home Inspectors)" talk about it. But there are no courses yet.

"What I think will happen is that some inspectors will develop an expertise, and agents and other inspectors who need that specialty will be referring business to them. But I haven't even seen that begin to develop."

Pulte Technology officer Alan Laing concedes there is a huge education effort ahead. "To make Pulte homes network ready, we are training our sales staff to understand gigabyte, Ethernet connections and other computer lingo. Through an educational training program, we are comfortable that Pulte employees will be able to communicate the benefits of structured wiring, the opportunities it holds to enhance a homeowner's way of life."

Probably the only group that has begun to think through the problem of selling smart houses is the Home Automation and Networking Association (HANA) – which has begun sponsoring annual shows on the East Coast and West Coast that include training seminars.

Those seminars typically have focused on training contractors to install systems, but now are turning their attention to builders and salesmen.

Weber believed the industry needs to start the learning curve soon, or it will fall behind.

History shows the sooner you get started on this stuff, the better off you'll be," he said. "The learning curve for the average real estate agent (age 48) is a lot tougher than it is for those 25-year-olds out there."

"We need to get into this process. As more and more broadband (home networking) systems are installed, and people see the convenience that these systems bring, the whole industry is going to take off like a rocket."

Frank Cook is publisher of Agency Law Quarterly, a publication of the Real Estate Intelligence Report. This article was reprinted with permission from the Winter 2001 issue.

Continued from Page 4

argument noting that he knew the easement was important to Johnson and therefore he owed Johnson a duty to determine whether the actual easement existed. Although Johnson received the maps and plans before closing, Neuville, too, had access to the maps and plans and should have noted the problem; he did not. The statute, the court observed, relieves a broker of his duty to disclose material facts when a reliable third-party knowledgeable about the property makes the disclosure. This statute does not protect a broker who make an affirmative negligent misrepresentation.

Foley v S.D.R.E.C., 598 N.W.2d 217 (1999)
Supreme Court of South Dakota

Facts: Foley, a licensed broker, apparently listed a commercial property belonging to Dr. Sabow. He then handled a series of unrelated transactions in which Sabow was both buyer and seller. Ultimately, Sabow became dissatisfied with Foley and filed a complaint against him with the South Dakota Real Estate Commission. The Commission fined Foley and put him on probation for a number of offenses including dealing with Sabow in bad faith, making misrepresentations and purporting to act as Sabow's buyer agent without a written buyer agency agreement. Foley appealed and his case eventually reached the South Dakota Supreme Court.

Issue: Foley contended that the Commission did not have "clear and convincing" evidence of a violation before it because his testimony conflicted with Sabow's. Foley said he sent Sabow a buyer agency agreement and Sabow wouldn't sign it. Sabow denied this. Foley also asserted his authority under the listing agreement gave him authority to act as Sabow's buyer agent in an exchange.

Held: The Supreme Court upheld the Commission's decision saying that although "clear and convincing" evidence is more than the "preponderance" standard used in civil cases, it still allows the agency to resolve credibility issues between witnesses with conflicting stories. The court agreed with the Commission that South Dakota's written buyer agency requirement required a written buyer agreement, not merely implied authority from a listing contract.

BOARD OF REALTY REGULATION CALENDAR AT A GLANCE

April

- 4/4-7/01 ARELLO MID-YEAR MEETING – BALTIMORE MD
- 4/12-12/01 MEETING OF THE BOARD OF REALTY REGULATION – HELENA
- 4/21/01 REAL ESTATE LICENSING EXAMINATION – MISSOULA

May

- 5/2-5/01 PROPERTY MANAGEMENT PRE-LICENSING COURSE & EXAM – HELENA
- 5/17-18/01 ROOKIE EDUCATION COURSE – BIGFORK
- 5/19/01 REAL ESTATE LICENSING EXAMINATION – BILLINGS
- 5/28/01 BOARD OFFICE CLOSED FOR MEMORIAL DAY

June

- 6/11-12/01 MEETING OF THE BOARD OF REALTY REGULATION – BIGFORK
- 6/16/01 REAL ESTATE LICENSING EXAMINATION – MISSOULA
- 6/24-27/01 REEA CONFERENCE – ORLANDO FL
- 6/28-29/01 ROOKIE EDUCATION COURSE – BOZEMAN

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